

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE EX PARTE APPLICATION OF SBK ART LLC,
Petitioner,
for an Order Pursuant to 28 U.S.C. § 1782
To Take Discovery for Use in Foreign
Proceedings.

CIVIL ACTION NO. 24-MC-0147 (PAE) (RFT)

ORDER

ROBYN F. TARNOFSKY, United States Magistrate Judge:

On March 26, 2024, SBK ART LLC (“Petitioner”) submitted an ex parte Application and Petition (the “Application”) pursuant to 28 U.S.C. § 1782 for an order authorizing Petitioner to serve subpoenas on Akin Gump Strauss Hauer & Feld LLP and Akin Gump LLP (together, “Akin”) to obtain discovery for use in: (1) a pending lawsuit filed in the Civil Court of Malta (the “Malta Action”), (2) a pending action in front of the General Court for the European Union (the “EU Action”), and (3) anticipated litigation in the Netherlands (the “Anticipated Litigation”) (together, the “Foreign Proceedings”). (See ECF 1, Petition; ECF 8, Motion.) This matter was referred to me for general pretrial supervision and dispositive motions. (See ECF 14, Order.) On April 18, 2024, I ordered Petitioner to serve Akin with the application and its supporting papers and set deadlines for Akin’s response to the Application, if any, and for Petitioner’s reply, if any. (See ECF 17, Order.) Having reviewed Petitioner’s and Respondents’ submissions in connection with the Application, I conclude that additional information is necessary before I provide my report and recommendation on the Application to the Court. Accordingly, Petitioner is ORDERED by **July 11, 2024** to make a submission containing the following information (or providing citations if Petitioner believes the information is contained within existing filings):

1. The location of the principal place of business of Akin Gump Strauss Hauer & Feld LLP.
2. Support for its position that Fortenova Group's control over Akin's documents "exists only insofar as they may be privileged" (see ECF 33, Petitioner's Reply at 10) and a discussion of whether Fortenova Group could require Akin to provide Foretenova Group with the discovery Petitioner is seeking.
3. Its response to Respondents' position that the only categories of potentially appropriate requested discovery are non-privileged materials either (i) "uniquely possessed by Akin" or (ii) shared only "with third parties other than" Fortenova Group and the European Union Council (see ECF 22, Respondents' Opp. at 12-13).
4. Whether the Court may defer deciding whether Akin's production of any of the requested discovery would potentially violate any relevant foreign law involving sanctions, confidentiality, secrecy, or privilege, and if the Court may defer that decision, whether issues about the legality under foreign law of producing the requested discovery would be amenable to resolution through the meet-and-confer process.

Respondents are ORDERED, by **July 17, 2024**, to file a submission that (a) addresses the specific nature of the burdens that Respondents would face if the Court were to permit issuance of subpoenas for discovery relating to non-privileged materials either (i) "uniquely possessed by Akin" or (ii) shared only "with third parties other than" Fortenova Group and the European Union Council; and (b) includes any responses that Respondents wish to make to Petitioner's anticipated filing pursuant to this Order.

A telephonic conference on the Application will be held on **July 23, 2024, at 3:30 pm.**

The parties are directed to dial **646-453-4442**; Access Code: **974 788 793#** at the scheduled time. If the scheduled conference date is not convenient for the parties, counsel should e-mail my chambers at TarnofskyNYSDChambers@nysd.uscourts.gov by July 3, 2024 to propose three alternative dates and times for the hearing during the week of July 22, 2024.

DATED: July 1, 2024
New York, New York

SO ORDERED.



ROBYN F. TARNOFSKY

United States Magistrate Judge